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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOUTHERN UTAH WILDERNESS ALLIANCE,
a Utah non-profit corporation, 425 E 100 S, Salt Lake City,
UT 84111,

Civil Action No.: 1:19-cv-2203

Plaintiff,

v.

UNITED STATES DEPARTMENT OF INTERIOR,
an agency of the United States of America, 1849 C Street,
N.W., Washington DC 20240,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Southern Utah Wilderness Alliance (“SUWA”), alleges as follows:

INTRODUCTION

1. In this action, brought pursuant to the Freedom of Information Act (“FOIA” or “the Act”), 5 U.S.C. § 552 *et. seq.*, or, in the alternative, the Administrative Procedure Act (“APA”),

5 U.S.C. § 701 *et. seq.*, SUWA challenges the unlawful acts of the United States Bureau of Land Management (“BLM”), the Office of the Secretary, Department of the Interior (“OS”) and the Office of the Solicitor, Department of the Interior (“SOL”), acting on behalf of the Defendant United States Department of Interior (“DOI”) as well as unlawful acts of the DOI itself in relation to SUWA’s multiple FOIA requests to BLM, OS, and SOL as described below.

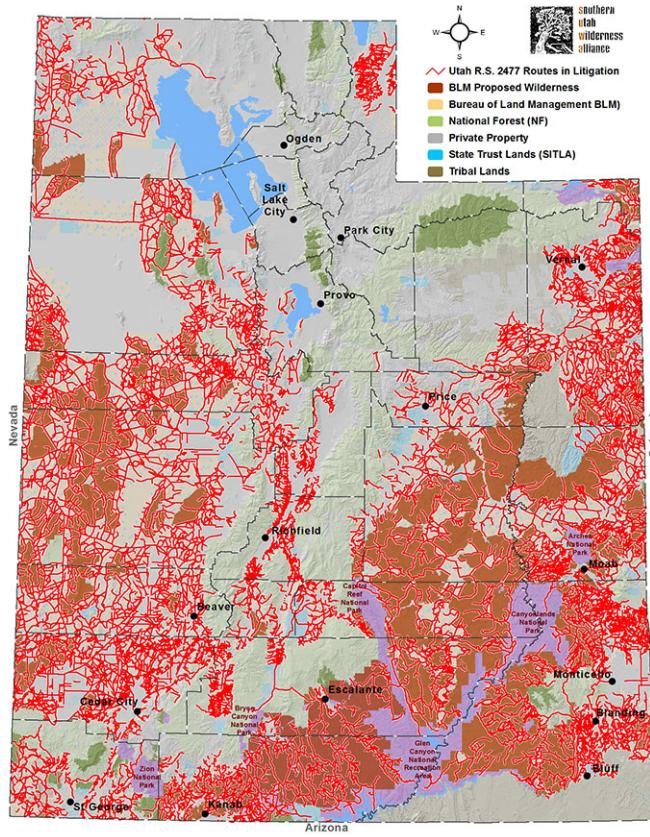
2. BLM, OS, SOL, and DOI have unlawfully withheld records requested by SUWA related to settlement discussions over litigation by the State of Utah and its counties that asserts rights-of-ways under Revised Statute 2477 (“R.S. 2477”). Utah and its counties have filed more than 20 cases in federal court, claiming rights to over 14,000 so-called “highways” totaling over 35,000 miles (the “Utah statewide R.S. 2477 litigation”). These cases are listed in paragraph 36 below.

3. R.S. 2477, enacted as part of the 1866 Mining Law, provided that “[t]he right of way for the construction of highways across public lands, not reserved for public uses, is hereby granted.” Congress repealed R.S. 2477 in 1976 in the Federal Land Policy and Management Act, but preserved any pre-existing right-of-way.

4. The State and counties’ claims crisscross millions of acres of federal lands in Utah, including land managed by the National Park Service, BLM, and U.S. Fish & Wildlife Service. These claims include some of Utah’s wildest places, including more than 2,000 miles of routes within Grand Staircase-Escalante National Monument, 152 miles within National Parks, and over 4,600 miles within proposed Wilderness areas. As the map on the following page illustrates, supposed R.S. 2477 rights-of-way are claimed in nearly every county in Utah. *Available at* <https://suwa.org/issues/phantom-roads-r-s-2477/> (last visited July 20, 2019). The photograph below the map shows a factually unfounded San Juan County “highway” claim in the Bridger Jack Mesa proposed wilderness south of Moab, Utah. *Id.*

State of Utah's R.S. 2477 Litigation

14,500 Segments and 36,00 Miles



5. The overwhelming majority of these alleged routes are not “roads” that lead to schools, stores, or towns. Rather, they are wash bottoms, cowpaths, and two-tracks in the desert, which the State of Utah and its counties seek to bulldoze and widen up to sixty-six feet—about as wide as ten passenger cars. The cases that make up the Utah statewide R.S. 2477 litigation, when considered collectively—although they have not been consolidated—represents the largest litigation ever brought by the State of Utah.

6. Unfounded R.S. 2477 claims pose one of the greatest threats to wilderness in Utah. Judicial acceptance of Utah’s argument that these R.S. 2477 claims are actually “highways” under this antiquated law—or a settlement by the federal government of these claims—would nullify or diminish longstanding protection for national parks, national monuments, wilderness areas and other scenic landscapes. And it would close the door on future protection of these remarkable public lands.

7. Since the beginning of the Trump Administration in January 2017, the DOI, OS, SOL, and BLM, on information and belief, have engaged in renewed settlement discussions with the plaintiffs in the Utah statewide R.S. 2477 litigation. The American public also has a profound interest in the future of the approximately 34 million acres of federal public land in Utah, much of which is land of wild character unrivaled in the United States. Closed-door settlements that may forever encumber the American public’s title to these federal lands are the antithesis of open government. Shining light on such government operations is one of FOIA’s main purposes. *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989) (a “core purpose of the FOIA, [] is contribut[ing] significantly to public understanding of the operations or activities of the government.”) (internal punctuation removed, emphasis in original).

8. SUWA submitted the FOIA requests at issue in this case, in part, so that it could

disseminate to the public information about the Trump Administration’s plans to use closed-door settlements of Utah statewide R.S. 2477 litigation claims to cut the public out of the legal process and effectively award Utah and its counties rights-of-way without making the State and counties prove that they are legally entitled to them. Obtaining this critical information will inform the public discourse regarding the future of R.S. 2477 right-of-way assertions on public lands in Utah—information that otherwise would not be widely available to, or disseminated to, the public.

9. At issue in this Complaint are three FOIA requests that SUWA filed with DOI on January 2, 2018: one each to the BLM, OS, and SOL. DOI and its subdivisions have violated FOIA’s 20-day decision deadline mandate and thus far failed to disclose even a single document responsive to these requests. In this Complaint, SUWA collectively refers to these FOIA requests as the “pending FOIA requests.”

10. Defendant’s actions regarding SUWA’s pending FOIA requests violate FOIA in two ways. First, Defendant failed to make timely determinations regarding SUWA’s FOIA requests. Second, Defendant failed to provide SUWA with estimated completion dates (“ECDs”) by which DOI would make a determination on SUWA’s FOIA requests and disclose responsive records.

11. These failures amount to illegal, constructive withholding of records responsive to SUWA’s FOIA requests and present a pattern, practice or policy of failing to comply with FOIA.

12. Each of these unlawful actions violate FOIA, or, in the alternative, the APA.

13. Because SUWA is engaged in ongoing public outreach, education campaigns, and government accountability efforts regarding federal compliance with environmental and energy laws, DOI’s repeated failures to comply with FOIA frustrate SUWA’s mission and the functions that Congress enacted FOIA to foster.

14. Accordingly, SUWA seeks a declaration from this Court that DOI has violated FOIA, or in the alternative, the APA. SUWA also seeks an order from this Court that directs DOI to promptly provide SUWA with the records requested herein.

JURISDICTION, VENUE AND BASIS FOR RELIEF

15. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

16. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for all FOIA cases in the District of Columbia.

17. Declaratory relief is appropriate under 28 U.S.C. § 2201.

18. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

19. Plaintiff SOUTHERN UTAH WILDERNESS ALLIANCE (“SUWA”) is a nonprofit environmental membership organization dedicated to the preservation of outstanding wilderness found throughout Utah, including lands subject to the R.S. 2477 claims by the State of Utah and its counties, and the management of wilderness-quality lands in their natural state for the benefit of all Americans. SUWA is headquartered in Utah, and has members in all fifty states and several foreign countries. SUWA’s members use and enjoy public lands throughout Utah for a variety of purposes, including scientific study, recreation, wildlife viewing, aesthetic appreciation, viewing cultural and historic artifacts, and financial livelihood. SUWA promotes local and national recognition of the region’s unique character through research and public education, and supports administrative and legislative initiatives to permanently protect Utah’s wild places. SUWA brings this action on its own behalf and on behalf of its members.

20. Because recognition of unfounded R.S. 2477 rights-of-way can negatively impact SUWA's members and organizational interests, SUWA actively engages in efforts to document and contest such claims. SUWA is a permissive intervenor in the vast majority of the State and counties' pending Utah R.S. 2477 cases and is actively working to defend the United States' title to these claims and to limit the scope of any established right-of-way to the narrowest width possible. The records at issue in this FOIA action are requested in support of these efforts. Because the information requested had not been publicly disclosed, its disclosure would significantly enhance public understanding of DOI's plans for adjudicating the claims of the State of Utah and its counties for unfounded R.S. 2477 rights-of-way on public lands. The records sought herein present new information that has not been previously disclosed to the public. Disclosing the information will increase public understanding of the subject above the level that currently exists.

21. The above-described interests of SUWA and its members have been, are being, and, unless the relief requested herein is granted, will continue to be adversely affected by DOI's failure to discharge its statutory duties under FOIA and by the consequent harm to SUWA and the public's interests in disclosure and the relief requested in this lawsuit will redress these injuries.

22. Defendant U.S. DEPARTMENT OF THE INTERIOR ("DOI") is an agency of the executive branch of the United States government, and is in possession, custody, or control of the records sought by SUWA, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f). The Bureau of Land Management ("BLM"), Office of the Secretary ("OS"), and Office of the Solicitor ("SOL") are administrative components of the DOI.

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STATUTORY BACKGROUND

23. FOIA imposes strict and rigorous deadlines on federal agencies. The Act requires a federal agency that receives a FOIA request to determine whether the requested records are exempt from disclosure under 5 U.S.C. § 552(b) and to communicate that determination to the requester within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines the records are not exempt from public disclosure, the agency is required to make the requested records “promptly available” to the requester. 5 U.S.C. § 552(a)(3)(A),

24. If the requester appeals an agency’s determination, the agency must make a determination with respect to that appeal within 20 business days. 5 U.S.C. § 552(a)(6)(A)(ii). The 20-business-day period commences on the date on which the request is first received by the appropriate component of the agency, “but in any event not later than ten days after the request is first received by any component of the agency” that is designated in the agency’s regulations to receive requests under FOIA. *Id.*

25. Congress set forth the circumstances in which federal agencies may take longer than 20 business days to make a determination. First, the agency may toll the 20 business-day deadline for up to ten additional business days while the agency is waiting for clarification of the original request that it has reasonably requested from the requester. 5 U.S.C. § 552(a)(6)(A)(ii)(I).

26. Second, the agency may also toll the 20 business-day deadline for up to ten additional business days if it needs to clarify with the requester any issues regarding fee assessment. 5 U.S.C. § 552(a)(6)(A)(ii)(II). If the agency faces “unusual circumstances,” the agency may extend the 20-business-day deadline if the agency sets “forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i). No extension will exceed 10 business days unless the agency provides written

notice to the requester explaining the “unusual circumstances” requiring an extension, establishes the date on which the agency expects to make the determination, and gives the requester “an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” 5 U.S.C. § 552(a)(6)(B)(ii).

27. Under FOIA, “unusual circumstances” are defined as “the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request[,]” or “the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request,” or “the need for consultations . . . with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.” 5 U.S.C. § 552(a)(6)(B)(iii).

28. If the agency fails to meet the disclosure deadlines established by FOIA, including the deadline to determine within 20 business days whether to respond to the request, the agency may not charge the requester for the costs incurred in searching for or duplicating the requested documents unless unusual or exceptional circumstances apply. 5 U.S.C. § 552(a)(4)(A)(viii).

29. Unless an agency subject to FOIA properly establishes a different timeline for disclosing responsive records, FOIA’s mandate to make public records “promptly available” to a requester requires federal agencies to provide responsive records to a requester within or shortly after the 20-business-day deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

30. FOIA mandates that every federal agency “(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the

request; and (B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—(i) the date on which the agency originally received the request; and (ii) an estimated date on which the agency will complete action on the request.” 5 U.S.C. § 552(a)(7).

31. A U.S. district court has jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

32. Any person making a FOIA request shall be deemed to have exhausted his administrative remedies with respect to such request if the agency to which the request was submitted fails to comply with the applicable time limit provisions in FOIA. 5 U.S.C. § 552(a)(6)(C)(i).

33. If the government can show that “exceptional circumstances” exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. 5 U.S.C. § 552(a)(6)(C)(i).

Notably, the term “exceptional circumstances” does *not* include a delay that results from a predictable agency workload of FOIA requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. 5 U.S.C. § 552(a)(6)(C)(ii).

34. Agency action arising under FOIA is also subject to judicial review under the APA.

35. Under the judicial review provisions of the APA, district courts are authorized to compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1). District courts must also set aside any agency action found to be arbitrary, capricious, an abuse of discretion, not in accordance with law, or made without observation of required procedures. 5 U.S.C. § 706(2).

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STATEMENT OF FACTS

Utah Statewide R.S. 2477 Litigation

36. The Utah statewide R.S. 2477 litigation to which the FOIA requests in this case are related includes the following cases: *Beaver Cnty. v. United States*, No. 2:12-cv-00423-CW-BCW (D. Utah May 3, 2012); *Box Elder Cnty. v. United States*, No. 1:12-cv-00105-CW (D. Utah May 4, 2012); *Carbon Cnty. (1) v. United States*, No. 2:11-cv-01043-CW (D. Utah Nov. 14, 2011) (cons.); *Duchesne Cnty. v. United States*, No. 2:12-cv-00425-CW-DBP (D. Utah May 3, 2012); *Daggett Cnty. v. United States*, No. 2:12-cv-00447-CW (D. Utah May 8, 2012); *Emery Cnty. (2) v. United States*, No. 2:12-cv-00429-CW-EJF (D. Utah May 4, 2012); *Grand Cnty. v. United States*, No. 2:12-cv-00466-CW (D. Utah May 11, 2012); *Iron Cnty. v. United States*, No. 2:12-cv-00472-BSJ (D. Utah May 14, 2012); *Juab Cnty. (2) v. United States*, No. 2:12-cv-00462-CW (D. Utah May 10, 2012); *Kane Cnty. (2) v. United States*, No. 2:10-cv-01073-CW (D. Utah Oct. 28, 2010) (cons.); *Millard Cnty. v. United States*, No. 2:12-cv-00451-CW (D. Utah May 8, 2012); *Piute Cnty. v. United States*, No. 2:12-cv-00428-CW (D. Utah May 4, 2012); *Rich Cnty. v. United States*, No. 2:12-cv-00424-CW (D. Utah May 3, 2012); *San Juan Cnty. (2) v. United States*, No. 2:12-cv-00467-CW (D. Utah May 11, 2012); *Sanpete Cnty. v. United States*, No. 2:12-cv-00430-CW (D. Utah May 4, 2012); *Sevier Cnty. v. United States*, No. 2:12-cv-00452-CW (D. Utah May 8, 2012); *Tooele Cnty. v. United States*, No. 2:12-cv-00477-CW-PMW (D. Utah May 15, 2012); *Uintah Cnty. v. United States*, No. 2:12-cv-00461-CW (D. Utah May 10, 2012); *Utah Cnty. v. United States*, No. 2:12-cv-00426-CW (D. Utah May 3, 2012); *Washington Cnty. v. United States*, No. 2:12-cv-00471-CW (D. Utah May 14, 2012); *Wayne Cnty. v. United States*, No. 2:12-cv-00434-CW (D. Utah May 4, 2012).

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SUWA's January 2, 2018, FOIA Requests for Records Regarding Settlement Discussions With Plaintiffs in the Utah Statewide R.S. 2477 Litigation

37. On January 2, 2018, SUWA sent three FOIA requests by email to the BLM, OS, and SOL, each requesting “records in the possession or control of the [BLM, OS, or SOL] regarding settlement discussions with plaintiffs in Utah’s statewide R.S. 2477 litigation, whether relating to all or any of the individual cases or claims alleged therein.” The requests further specified that SUWA was seeking “all records in the possession or control of [BLM, OS, or SOL] relating to any such communications with attorneys or representatives of the plaintiffs in the statewide R.S. 2477 litigation” and “all records in the possession or control of [BLM, OS, or SOL] relating to any such communications with any member of Congress or their staff.”

***FOIA Request to BLM for Records
Regarding R.S. 2477 Litigation Settlement Discussions***

38. SUWA sent follow up letters including requests for estimated completion dates (“ECDs”) by email to BLM on May 17, 2019, May 31, 2019, and June 17, 2019.

39. BLM did not confirm receipt of the FOIA request sent to it until June 14, 2019, when it assigned it tracking number 2019-00828 and indicated that it would honor the original date of the request (January 2, 2018) as the date of receipt. BLM also indicated it was placing the request on the “Complex” processing track, which BLM asserted “is for requests that can be processed in twenty-one to sixty workdays.” BLM did not provide a more specific ECD.

40. BLM has not complied with the deadline for issuing a determination regarding the records SUWA requested on January 2, 2018, which is a violation of the FOIA.

41. The BLM has never provided an ECD for SUWA’s January 2, 2018 FOIA request.

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***FOIA Request to OS for Records
Regarding R.S. 2477 Litigation Settlement Discussions***

42. On February 1, 2018, the OS confirmed that, on January 2, 2018, it had received the FOIA request sent to it, assigning it a tracking number of OS-2018-00487. OS placed SUWA's request on the "Complex" processing track but provided no ECD.

43. SUWA sent follow up messages or letters and requests for estimated completion dates ("ECDs") by email to the OS on June 8, 2018, July 11, 2018, May 17, 2019, May 31, 2019, and June 17, 2019.

44. On May 21, 2019, the OS responded that "it will be at least 3 months before we can provide a response to you" and that OS "cannot at this time give a more exact estimated date of completion."

45. On June 3, 2019, the OS indicated that it was still waiting on a program office to send potentially responsive records, and that "[w]hile we cannot provide you a timeline at this point as we are short staffed, please be assured we are working to complete your request as promptly as we can." OS did not provide an ECD.

46. The OS has not complied with the deadline for issuing a determination regarding the records SUWA requested on January 2, 2018, which is a violation of the FOIA.

47. The OS has never provided an ECD for SUWA's January 2, 2018 FOIA request.

***FOIA Request to SOL for Records
Regarding R.S. 2477 Litigation Settlement Discussions***

48. On January 5, 2018, the SOL confirmed that, on January 3, 2018, it had received the FOIA request sent to it, assigning it a tracking number of SOL-2018-0065, but provided no ECD.

49. SUWA sent follow up messages or letters and requests for estimated completion dates ("ECDs") by email to the SOL on June 8, 2018, July 11, 2018, May 17, 2019, and May 31, 2019.

50. On May 23, 2019, the SOL advised SUWA that it had completed its search and collected documents from four custodians and anticipated a release by mid-June.

51. Hearing nothing from the SOL by mid-June, on June 17, 2019, SUWA again sent a follow up letter and request for an ECD by email to the SOL.

52. SOL has not complied with the deadline for issuing a determination regarding the records SUWA requested on January 2, 2018, which is a violation of the FOIA.

53. The SOL has never provided an ECD for SUWA's January 2, 2018 FOIA request.

ALLEGATIONS PERTAINING TO ALL REQUESTS AT ISSUE HEREIN

54. The filing of this lawsuit is necessary to compel Defendant to disclose all records that are responsive to Plaintiff's FOIA requests.

55. The FOIA requires an agency to issue a final determination resolving a FOIA request within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i).

56. Defendant has failed to issue a final decision on Plaintiff's FOIA requests within 20 business days of their submission to Defendant.

57. Defendant has failed to provide a written notice to the Plaintiff asserting that "unusual circumstances" prevented them from compliance with FOIA's decision deadlines. 5 U.S.C. § 552(a)(6)(B)(ii).

58. The deadlines for issuing a final determination of Plaintiff's FOIA requests have all elapsed.

59. None of FOIA's nine exemptions to mandatory disclosure apply to the information currently being withheld by the Defendant that is responsive to Plaintiff's FOIA request.

60. As of the date this action was filed, the Defendant has not provided final determinations on any of Plaintiff's FOIA requests that are pending with Defendant.

61. As of the date this action was filed any estimated completion dates provided by the Defendant have lapsed and it has not provided Plaintiff with new estimated completion dates for the currently pending FOIA requests.

62. Plaintiff has exhausted all administrative remedies required by FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

63. Plaintiff's claims presented herein are not insubstantial within the meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

64. No exceptional circumstances exist within the meaning of FOIA, 5 U.S.C. § 552(a)(6)(C) that would allow this Court to grant Defendant more time to review and disclose requested records.

65. Defendant has not exercised due diligence in searching for and releasing records responsive to Plaintiff's requests.

66. The delays at issue in this case result from a predictable agency workload of FOIA requests. Defendant has not made reasonable progress in reducing its backlog of pending requests.

67. The circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholdings at issue in this case.

68. Based on the nature of SUWA's organizational activities, SUWA will continue to employ FOIA's provisions for information requests to BLM, OS, SOL, and DOI in the foreseeable future. Indeed, SUWA has firm and definite plans to submit additional FOIA requests to BLM, OS, SOL, and DOI in the near future. SUWA's professional activities will be adversely affected if BLM, OS, SOL, or DOI are allowed to continue violating FOIA's disclosure provisions.

Unless enjoined and made subject to a declaration of SUWA's legal rights by this Court, BLM,

OS, SOL, and DOI will continue to violate the rights of SUWA to receive public records under FOIA.

69. SUWA has been required to expend costs and to obtain the services of attorneys to prosecute this action.

CAUSES OF ACTION

COUNT I **VIOLATION OF THE FREEDOM OF INFORMATION ACT:** **CONSTRUCTIVE DENIAL OF FOIA REQUESTS AND** **WITHHOLDING OF INFORMATION**

70. SUWA hereby incorporates by reference the allegations in the preceding paragraphs.

71. SUWA has a statutory right to the records it seeks, which are “agency records” within the meaning of FOIA, and there is no legal basis for Defendant to assert that any of FOIA’s nine disclosure exemptions apply to the records requested. *See* 5 U.S.C. § 552(b)(1)-(9).

72. Defendant violated SUWA’s rights under FOIA by failing to comply with the Act’s decision deadlines and to make a determination on SUWA’s FOIA requests and by thus constructively withholding information responsive to SUWA’s FOIA requests.

73. Based on the nature of SUWA’s professional activities, it will continue to employ FOIA’s provisions for information requests to Defendant in the foreseeable future.

74. SUWA’s professional activities will be adversely affected if Defendant is allowed to continue violating FOIA’s disclosure provisions as it has in this case.

75. Unless enjoined and made subject to a declaration of SUWA’s legal rights by this Court, Defendant will continue to violate the rights of SUWA to receive public records under FOIA.

76. SUWA is entitled to reasonable costs of litigation, including attorneys’ fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

COUNT II

**VIOLATION OF THE FREEDOM OF INFORMATION ACT:
DECISION DEADLINE VIOLATIONS**

77. SUWA hereby incorporates by reference the allegations in the preceding paragraphs.

78. SUWA has a statutory right to have Defendant process its FOIA requests in a manner which complies with FOIA. SUWA's rights in this regard were violated when the Defendant failed to make a determination on SUWA's FOIA requests by the deadlines imposed by FOIA. 5 U.S.C. §§ 552(a)(6)(A)(i); 552(a)(6)(A)(ii).

79. Defendant is unlawfully withholding public disclosure of records sought by SUWA, records which are "agency records" within the meaning of FOIA, to which SUWA is entitled, and for which no valid disclosure exemption applies.

80. Based on the nature of SUWA's professional activities, it will continue to employ FOIA's provisions in information requests to Defendant in the foreseeable future.

81. SUWA's professional activities will be adversely affected if Defendant allowed to continue violating FOIA's decision deadlines as it has in this case.

82. Unless enjoined and made subject to a declaration of SUWA's legal rights by this Court, Defendant will continue to violate the rights of SUWA to have its information requests processed as required by FOIA.

83. SUWA is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

COUNT III

**VIOLATION OF THE FREEDOM OF INFORMATION ACT:
FAILURE TO PROVIDE AN ESTIMATED DATE ON WHICH THE AGENCY WILL
COMPLETE ACTION ON PLAINTIFF'S FOIA REQUESTS**

84. FOIA requires federal agencies to provide the requester with information about the status of the agency's response to an information request or appeal, including an estimated date on

which the agency will complete action on the request or appeal. 5 U.S.C. § 552(a)(7)(B)(ii).

85. SUWA repeatedly asked Defendant, or its components BLM, OS, and SOL, for an estimated date on which Defendant would complete action on SUWA's FOIA requests. In so doing, SUWA constructively invoked 5 U.S.C. § 552(a)(7)(B)(ii).

86. As of the date this action was filed, Defendant has failed to provide an estimated date on which Defendant would complete action on SUWA's pending FOIA requests.

87. Defendant has repeatedly violated and continues to violate FOIA by failing to provide SUWA with an estimated date of completion for SUWA's pending requests.

88. SUWA is entitled to reasonable costs of litigation and attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

COUNT IV

VIOLATION OF FOIA OR THE APA: ENGAGING IN A PATTERN, PRACTICE OR POLICY OF UNLAWFUL CONDUCT OF FAILURE TO PROVIDE ESTIMATED COMPLETION DATES

89. SUWA hereby incorporates by reference the allegations in the preceding paragraphs.

90. Defendant has adopted and is engaged in a pattern, practice or policy of violating FOIA's procedural requirements when processing FOIA requests by repeatedly refusing to issue an estimated date on which it will complete action on information requests as required by 5 U.S.C. § 552(a)(7)(B)(ii).

91. Defendant is required by the FOIA and the APA to respond to public information requests in a manner that discharges certain non-discretionary duties and to carry out its statutory duties in a manner that is not arbitrary, capricious or an abuse of discretion and not in accordance with law.

92. In this case Defendant has engaged in a pattern, practice or policy of violating FOIA in responding to SUWA's information requests by its failure to provide estimated dates by which

they would be completed.

93. Defendant's pattern, practice or policy of failing to provide estimated completion dates for processing information requests violates the intent and purpose of FOIA.

94. Defendant's patterns, practices or policies for processing FOIA requests have resulted in violations of SUWA's rights to the lawful implementation of FOIA as alleged above.

95. Additionally, Defendant's patterns, practices or policies for processing FOIA requests are likely to result in future violations of FOIA that will harm SUWA and its members because SUWA is likely to continue seeking public records from Defendant.

96. Defendant's patterns, practices or policies of unlawful conduct in violation of the FOIA's clear requirement to issue an estimated date on which it will complete action on information requests is likely to recur absent intervention by this Court.

97. Defendant's pattern, practice or policy exists, whether formal or informal in nature.

98. FOIA imposes no limits on courts' equitable powers in enforcing its terms, and this Court should exercise its equitable powers to compel Defendant to comply with the clear requirements of FOIA and prevent it from continuing to apply its unlawful FOIA pattern, practice or policy.

99. SUWA is entitled to a declaration that Defendant's actions violated FOIA and to an injunction barring Defendant from violating FOIA in the future when responding to SUWA's FOIA requests. Whether made under FOIA or the APA, declaratory or injunctive relief will clarify and settle the legal relations at issue and afford relief from the uncertainty and controversy giving rise to these proceedings.

100. Defendant's unlawful patterns, practices or policies of violating FOIA when responding to SUWA's FOIA requests entitles SUWA's to an award of reasonable attorney fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

COUNT V

(In the alternative to Counts I through IV)

**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT:
FAILING TO COMPLY WITH FOIA IN RESPONDING TO
SUWA's FOIA REQUESTS**

101. SUWA hereby incorporates by reference the allegations in the preceding paragraphs.

102. Defendant has failed to act in an official capacity under color of legal authority by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) issue timely final determinations of SUWA's FOIA requests and; (2) provide SUWA with the estimated completion dates for its requests.

103. SUWA has been adversely affected and aggrieved by the Defendant's failure to comply with the mandates of FOIA. Defendant's failure and refusal to: (1) issue timely final determinations of SUWA's FOIA requests and; (2) provide SUWA with the estimated completion dates for its requests, has injured SUWA's interests in public oversight of governmental operations and constitute a violation of Defendant's statutory duties under the APA.

104. SUWA has suffered a legal wrong as a result of the Defendant's failure to comply with the mandates of FOIA. Defendant DOI's failure and refusal to: (1) issue timely final determinations of SUWA's FOIA requests and; (2) provide SUWA with the estimated completion dates for its requests, has injured SUWA's interests in public oversight of governmental operations and constitute a violation of Defendant's statutory duties under the APA.

105. Defendant's failure and refusal to: (1) issue timely final determinations of SUWA's FOIA requests and; (2) provide SUWA with the estimated completion dates for its requests, constitutes agency action unlawfully withheld and unreasonably delayed and is therefore

actionable pursuant to the APA, 5 U.S.C. § 706(1).

106. Alternatively, Defendant's failure and refusal to: (1) issue timely final determinations of SUWA's FOIA requests and; (2) provide SUWA with the estimated completion dates for its requests, is a violation of FOIA and is therefore arbitrary, capricious, or an abuse of discretion and not in accordance with law, and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(2).

107. SUWA is entitled to judicial review under the Administrative Procedure Act 5 U.S.C. §§ 702, 706.

108. SUWA is entitled to costs of disbursements and costs of litigation, including reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. § 2412.

REQUESTS FOR RELIEF

WHEREFORE, SUWA requests that this Court:

- 1.** Adjudge and declare that Defendant has violated FOIA for the reasons set forth above;
- 2.** Order Defendant to comply immediately with FOIA by conducting an adequate search for responsive records, and by providing SUWA all non-exempt public records subject to SUWA's FOIA requests;
- 3.** Declare that Defendant has engaged in an unlawful pattern or practice of violating FOIA when responding to SUWA's FOIA requests;
- 4.** Enjoin Defendant from continuing that unlawful pattern or practice of violating FOIA when responding to SUWA's future FOIA requests for documents;
- 5.** Award SUWA its reasonable attorneys' fees and litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E) and/or award SUWA its reasonable fees, expenses, costs, and disbursements, including attorneys' fees associated with this litigation, under the Equal Access to Justice Act, 28

U.S.C. § 2412;

6. Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and
7. Grant such further and additional relief as this Court may deem just and proper.

Respectfully submitted for the Court's consideration, this 24th day of July 2019.

/s/ David A Bahr
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